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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

YSMAEL QUIRICO HERNANDEZ
VENEGAS; et al.,

Petitioners,

v.

PETER D. KEISLER, ** Acting Attorney
General,

Respondent.

No. 04-73933

Agency Nos. A75-253-624
 A75-253-625
 A75-253-626
 A75-253-698
 A75-253-699
 A75-253-701

MEMORANDUM *

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted October 16, 2007***
San Francisco, California

Before: WALLACE, KLEINFELD, and RAWLINSON, Circuit Judges.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

**Peter D. Keisler is substituted for his predecessor, Alberto R. Gonzalez, as Acting Attorney General of the United States, pursuant to Fed. R. App. P. 43 (c)(2).

*** The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

The Board of Immigration Appeals (Board) determined that petitioners were not eligible for asylum or withholding of removal under 8 U.S.C. § 1231 and withholding of removal under the Convention Against Torture (CAT). Substantial evidence supports the Board's conclusion. *See Wang v. Ashcroft*, 341 F.3d 1015, 1019-1020 (9th Cir. 2003).

To establish eligibility for asylum on the basis of past persecution, petitioners must show: “(1) an incident, or incidents, that rise to the level of persecution; (2) that is ‘on account of’ one of the statutorily-protected grounds; and (3) is committed by the government or forces the government is either ‘unable or unwilling’ to control.” *Navas v. INS*, 217 F.3d 646, 655-56 (9th Cir. 2000).

Petitioners failed to show that any claimed past persecution was committed by the Mexican government or forces that the government was unable or unwilling to control. The woman who allegedly beat Arcinda Hernandez-Venegas was not affiliated with the government; furthermore, Arcinda Hernandez-Venegas testified that the woman was incarcerated for over a month and forced to pay part of Arcinda Hernandez-Venegas' medical costs, evidencing the government's willingness and ability to control her.

Petitioners are not eligible for relief under the CAT as there was no showing that the mistreatment was “by or at the instigation of or with the consent or acquiescence of a public official.” 8 C.F.R. § 208.18(a)(1).

Petitioners did not challenge on appeal the Board’s determination that Reina Hernandez-Venegas was not born in the United States. The argument is therefore waived.

PETITION FOR REVIEW DENIED.